



COMMONWEALTH OF PENNSYLVANIA

April 20, 2021

E-FILED

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

**Re: Pennsylvania Public Utility Commission, v. Pike County Light & Power Company
(Electric) / Docket No. R-2020-3022135**

Dear Secretary Chiavetta:

Enclosed please find the Comments, on behalf of the Office of Small Business Advocate (“OSBA”), in the above-captioned proceeding.

If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Sharon E. Webb

Sharon E. Webb
Assistant Small Business Advocate
Attorney ID No. 73995

Enclosures

cc: Robert D. Knecht
Parties of Record

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PENNSYLVANIA PUBLIC UTILITY
COMMISSION**

v.

**PIKE COUNTY LIGHT AND
POWER COMPANY (ELECTRIC)**

:
:
:
:
:
:
:
:
:
:

DOCKET NO. R-2020-3022135

**COMMENTS OF THE OFFICE OF SMALL BUSINESS ADVOCATE
ON NON-UNANIMOUS SETTLEMENT**

I. INTRODUCTION

On October 26, 2020, Pike County Light and Power Company (“PCL&P” or “Company”) filed Supplement No. 82 to Tariff Electric - Pa. P.U.C. No. 8 (“Supplement No. 82”) with the Pennsylvania Public Utility Commission (“Commission”) a request for additional annual distribution revenues of \$1,933,600 million per year, an increase of 17.3% on a total bill basis, or 36.9 percent on a base rate basis.¹

On December 17, 2020, the Commission suspended the proposed effective date of PCL&P’s filing and instituted an investigation into the justness and reasonableness of the issues raised in the PCL&P filing.

On November 13, 2020, the Office of Small Business Advocate (“OSBA”) filed a complaint against the PCL&P filing.

On January 11, 2021, a prehearing conference was held before Administrative Law Judge (“ALJ”) Mary D. Long.

¹ See OSBA Statement No. 1 at 2.

On January 13, 2021, ALJ Long issued her Scheduling Order.

On February 2, 2021, the OSBA submitted the direct testimony of Robert D. Knecht. On February 22, 2021, the OSBA submitted the rebuttal testimony of Mr. Knecht. March 4, 2021, the OSBA submitted the surrebuttal testimony of Mr. Knecht.

Prior to the evidentiary hearings, the parties reached agreement on a revenue requirement increase of \$1,400,000, 26.9 percent of future test year current rate revenues. Despite extensive negotiations, the parties have not been able to resolve the issues of revenue allocation and rate design. On March 29, 2021, Counsel for the Company advised ALJ Long that the parties were at an impasse on revenue allocation, and requested an extension of the time to file briefs on the issue. ALJ Long, via email to the parties on March 29, 2021, granted the request to defer the filing of Main Briefs until noon on April 5, 2021. After further negotiations, the parties were unable to resolve the issue of revenue allocation.

Evidentiary hearings scheduled for March 9-12, 2021, were cancelled as all parties waived cross examination.

The OSBA submitted its Main Brief on April 5, 2021.

A Joint Petition for Partial Settlement (“Partial Settlement”) was submitted concurrently with reply briefs, which addresses revenue requirement and customer charge issues.

The OSBA submitted a Reply Brief in response to the issues raised in the Main Briefs of other parties pursuant to the procedural schedule set forth in ALJ Long’s January 13, 2021, Scheduling Order, as modified by her March 29, 2021 email.

Following the receipt and review of the parties’ Main Briefs, and prior to the filing of reply briefs, on April 9, 2021, ALJ Long issued an Order directing counsel for all parties to appear for a telephonic hearing on April 12, 2021, for a status conference. At the status conference, ALJ Long presented procedural options to resolve the issues of rate design and revenue allocation. Following the April 12, 2021 conference, the OSBA participated in settlement discussions with the parties. However, full settlement could not be reached.

On April 16, 2021, Counsel for PCP&L notified ALJ Long of a non-unanimous settlement, filed that non-unanimous settlement, and proposed a procedure to allow for comments or objections to the settlement. In response, ALJ Long directed that comments to the non-unanimous settlement should be filed by noon on April 20, 2021. Reply comments are due by noon on April 22, 2021.

The OSBA files these comments to the Joint Petition for Settlement on Rate Structure and Rate Design by Pike County Light and Power Company, the Bureau of Investigation and Enforcement, and the Office of Consumer Advocate (“Non-Unanimous Settlement”) pursuant to ALJ Long’s April 16, 2021 email.

II. COMMENTS

A. The OSBA is the only party in this proceeding to present revenue allocation proposals based on a cost allocation study that does not contain technical errors admitted by the Company.

The Company’s originally filed electric class cost of service study (“ECOSS”) is presented in PCL&P Exhibits E-6 and E-7. *See* PCL&P Statement No. 1. In responding to OSBA interrogatories, the Company admitted to two material programming or technical errors in its ECOSS model. These errors are not related to difference in professional judgment but are in fact inadvertent but nonetheless serious programming errors in the Company’s model. *See* OSBA Main Brief at 2 *citing* OSBA Statement No. 1 at 6. Unfortunately, the Company failed to timely correct its filed ECOSS when it became aware of these serious errors, and parties other than OSBA were apparently unaware of the significant magnitude of the problems when they submitted their direct testimony. OSBA Main Brief at 7.

I&E witness Eryan A. Sakaya submitted direct testimony that generally accepted the Company's filed ECOSS (using the future test year version rather than the historical test year version) but failed to correct for the errors admitted by the Company. OSBA Main Brief at 2 *citing* I&E Statement No. 3 at 20.

OCA witness Dr. Karl R. Pavlovic submitted an alternative OCA ECOSS. The OCA ECOSS failed to correct the admitted errors in the Company's filed ECOSS. Moreover, the OCA ECOSS adopted a cost classification method for distribution plant that has been consistently rejected by the Commission. OSBA Main Brief at 3 *citing* OCA Statement No. 2 at 13.

OSBA witness Robert D. Knecht submitted two ECOSS simulations. The first (OSBA ECOSS I) corrected the Company's ECOSS for the admitted errors and made no other changes. The second (OSBA ECOSS II) modified the classification of distribution plant to be more consistent with Commission precedent, and it incorporated several other technical changes that (a) better align cost allocation with cost causation and (b) better reflect industry practice. OSBA Main Brief at 3, *citing* OSBA Statement No. 1, Exhibit IEC-3

In its rebuttal testimony, the Company modified its ECOSS in Exhibits E-6 Rev and E-7 Rev to correct for the admitted errors in its filed ECOSS. The results of this corrected ECOSS are virtually identical to those in OSBA ECOSS I. Thus, the Company confirmed the evidence of Mr. Knecht that the technical corrections to the ECOSS had a significant impact on the cost allocation results and the implications for revenue allocation. The Company did not accept the other changes proposed in OSBA ECOSS II, although its rebuttal testimony did not address many of the issues raised by Mr. Knecht. *See* PCL&P Statement No. 1-R, Exhibit E-6 Rev and E-7 Rev. Most unfortunately, however, the Company failed to provide an updated revenue

allocation to reflect the significant changes in the cost allocation methodology in rebuttal, surrebuttal or rejoinder testimony. Moreover, neither Witness Sakaya or Witness Pavlovic made any corrections to their analyses to reflect the impact of the errors in their rebuttal or surrebuttal testimony.

Thus, the only revenue allocation proposals on record in this proceeding that are not based on a cost allocation study that contains significant admitted technical errors are those presented in OSBA's testimony. It is therefore inappropriate for the Non-Unanimous Settlement to rely on revenue allocation evidence other than that submitted by the OSBA.

B. The arguments of the parties to the Non-Unanimous Settlement are not supported by record evidence.

The Non-Unanimous Settlement is a "black box" settlement for revenue allocation and rate design, that is not explicitly based on any particular ECOSS model filed in this proceeding. *See* Non-Unanimous Settlement, Para. 7, p. 2. While the Non-Unanimous Settlement itself offers little if any justification for the settlement, the parties' statements in support attempt to justify the proposed revenue allocation. These rationales vary widely, being consistent only in their lack of any credible evidentiary basis.

The Company states that its ECOSS, as revised in rebuttal, ". . . provides a benchmark to compare existing rates and revenue levels by class with respect to their underlying costs." Non-Unanimous Settlement, Appendix C at 4. The OSBA agrees that the Company's rebuttal ECOSS did eliminate the obvious technical errors in the original filing, although that ECOSS remains inconsistent with Commission precedent and sound cost causation principles. OSBA Main Brief at 9. Nevertheless, the OSBA agrees that the Company's rebuttal ECOSS is sufficiently credible

for consideration in base rate case settlement negotiations. However, the Company’s rebuttal ECOSS was clearly not used as a “benchmark” for the revenue allocation proposed in the Non- Unanimous Settlement. The table below sets forth the class rate of return at present rates in the Company’s “benchmark” rebuttal ECOSS, and the rate increases proposed in the Non- Unanimous Settlement.

PCL&P Rebuttal ECOSS and Non-Unanimous Settlement Rate Increases		
	Rate of Return Present Rates	Non-Unanimous Settlement Increase
Total Residential (SC1)	4.3%	21.6%
Small C&I Secondary (SC2-S)	4.7%	34.5%
Small C&I Primary (SC2-P)	7.4%	24.3%
Municipal Lighting (SC3)	4.9%	28.4%
Private Area Lighting (SC4)	3.1%	0.0%
Total	4.6%	26.8%
Sources: OSBA Main Brief at 12; Non-Unanimous Settlement at 3.		

The revenue allocation in the Non- Unanimous Settlement is wholly inconsistent with the Company’s “benchmark.” The SC2-S class exhibits an above-average class rate of return and yet is assigned a rate increase far in excess of system average, causing rates to move farther away from costs. The SC1 class has a below-average rate of return and is assigned a below average increase, similarly causing revenues to move farther away from costs. Even the proposed private lighting class increase makes no sense, since the class with the lowest rate of return is assigned a zero increase. The OSBA respectfully submits that this proposed revenue allocation is not consistent

with the Commonwealth Court's interpretation of allocated cost as the polestar criterion for revenue allocation.²

The Company goes on to argue that the Non-Unanimous Settlement revenue allocation lies within the range of litigation positions of the parties to the proceeding.³ Non-Unanimous Settlement Appendix C at 4. While this may be true, the OSBA respectfully submits that simply because a party has taken a litigation position does not necessarily imply that the position is reasonable or must be considered in a settlement. In this case, all parties except the OSBA have taken litigation positions for revenue allocation that are based on cost analyses that are admittedly technically incorrect (and in the case of OCA, wholly inconsistent with Commission precedent). A settlement must be much more than simply an average of the positions of the parties; it must be reasonable, and it must be consistent with the evidence.

The Company also argues that the Non-Unanimous Settlement revenue allocation reflects compromise on "varying opinions on ratemaking principles accepted by the Commission" and that no one cost allocation methodology is perfect. Non-Unanimous Settlement Appendix C at 4. The OSBA is unaware of any Commission precedent which accepts technical errors of the type included in the ECOSS filed by the Company in this proceeding. For example, the Company's filed ECOSS assigned secondary voltage system distribution costs to primary voltage customers who do not use the secondary system. This is not a difference of opinion; this is a programming error. Moreover, the OSBA disagrees that the Commission accepts a variety of cost allocation methods in making revenue allocation determinations. In the most recent Columbia Gas case, the Commission in fact rejected the approach offered by Columbia to use an average of two different cost allocation methods, and specifically based its determination on the cost allocation method

² *Lloyd v. Pennsylvania Public Utility Commission*, 904 A.2d, 1010, 1020 (Pa. Cmwlth. 2006)

³ OCA makes a similar argument. Appendix E at 4.

presented by the OCA. *See Pa. PUC v Columbia Gas of Pennsylvania, Inc.* R-2020-3018835 (Order Entered February 19, 2021) at 211. In the most recent UGI Electric base rate proceeding, the Commission based its revenue allocation decision on the cost allocation method submitted by the Company, a method that is consistent with that offered by OSBA in this proceeding. *See Pa. PUC v. UGI Utilities, Inc. – Electric Division* (Order Entered October 25, 2018) at 165.

The Company then goes on to cite to the concerns raised in the public input hearings.⁴ Non-Unanimous Settlement Appendix C at 5. The Company downplays the concerns raised by the business customers and highlights the complaints of residential customers. The OSBA acknowledges the understandable complaints of customers, who were presented with a proposal for a 36.9 percent system-wide distribution rate increase. However, OSBA's interpretation of the public input comments is that the public's concerns were substantially related to the overall magnitude of the rate increase. The OSBA did not participate in the revenue requirement portion of this proceeding, as it does not have the resources to do so.

Finally, the Company claims that assigning an increase to the residential class that exceeds that in the initial filing would result in rate shock.⁵ Non-Unanimous Settlement Appendix C at 5. From the Company's perspective then, even if the Company files a cost allocation study that is full of errors, correcting those errors and altering its filed revenue allocation proposal would necessarily cause rate shock. This proposition is absurd, as it would make correcting errors all but impossible. In contrast to the Company's position, the OSBA cites to the ongoing PECO Gas base rates case, in which the Company originally filed an erroneous cost of service study, it timely corrected that cost of service study in interrogatory responses prior to the due date for intervenor testimony, and it presented a fully revised revenue allocation and rate design proposal in rebuttal

⁴ The OCA makes a similar reference. Appendix E at 4.

⁵ OCA makes a similar argument. Appendix E at 4.

testimony.⁶ Under PCL&P's theory of rate shock, PECO Gas would not be permitted to make those corrections. Moreover, the OSBA observes that the Company would appear to apply its rate shock standard only to the electric case and its residential customers, but not to its concurrent gas base rates case and commercial customers. In the concurrent gas proceeding, the Company's original proposed increase for the SC2 non-residential rate class was \$6,303 per year. Docket No. R-2020-3022134, Exhibit G-8, page 13 of 13. The settlement for that proceeding assigns an increase to SC2 of \$20,000, a more than three-fold increase, even after a reduction in the overall revenue requirement. Under the Company's standard, the gas case settlement would be deemed to be rate shock for commercial customers and would thus be rejected. In contrast to parties' positions in the electric proceeding, the OSBA agreed to that settlement because the Company's original revenue allocation proposal was based on a cost allocation study that was not consistent with Commission precedent, and because the OSBA respected Commission precedent both in filed testimony and settlement negotiations.

The I&E statement in support asserts that the Non-Unanimous Settlement revenue allocation “. . . moves each class closer to its actual cost of service” and is thus consistent with *Lloyd*. Non-Unanimous Settlement Appendix D at 4. The I&E did not file its own ECOSS in this proceeding and relied only on the Company's filings. As shown above, the revenue allocation in the Non-Unanimous Settlement does not move class revenues closer to cost of service using the Company's corrected rebuttal ECOSS. Thus, it is apparent that I&E continues to rely on the originally-filed ECOSS with all of its errors. I&E's justification is therefore inconsistent with the evidentiary record.

⁶ See Recommended Decision Non-Proprietary, Deputy Chief Administrative Law Judge Christopher P. Pell, Docket No. R-2020-3018929, April 9, 2021, at 271-272.

The OCA statement in support acknowledges that the Company's filed ECOSS was erroneous, that the errors were corrected in rebuttal, and (at least implicitly) that the Company failed to update its revenue allocation for those changes. Non-Unanimous Settlement Appendix E, footnote 1, page 3. The OCA asserts that "mechanically tying a revenue allocation proposal to a specific study would not be reasonable." While such a mechanistic approach to revenue allocation may indeed be problematic, it is not near so problematic as proposing a revenue allocation settlement that is not directionally consistent with the only accurate cost allocation studies on the record, as the OCA attempts to do.

The OCA also cites to the cost allocation analysis presented by Dr. Pavlovic in support of the Non-Unanimous Settlement revenue allocation. Non-Unanimous Settlement Appendix E at 3. As detailed in the OSBA's main brief, Dr. Pavlovic's ECOSS (a) it contains the blatant errors in the Company's original filing, (b) it is inconsistent with established Commission precedent, and (c) it is inconsistent with the NARUC Electric Utility Cost Allocation Manual. OSBA Main Brief at 13. The OSBA respectfully submits that Dr. Pavlovic's ECOSS does not provide a credible basis for revenue allocation in this proceeding.

The OCA goes on to cite to the economic hardship associated with the pandemic in support of the Non-Unanimous Settlement. Non-Unanimous Settlement Appendix E at 4. OCA appears to ignore the fact that the Non-Unanimous Settlement would assign a nearly 35 percent rate increase to the SC2-S commercial rate class, heedless of the evidence of its own witness regarding the devastating impact of the pandemic on small businesses. OCA Statement No. 2 at 11.

III. CONCLUSION

The OSBA respectfully requests that the Commission consider its comments above in reviewing the non-unanimous settlement on revenue allocation and rate design and reject the Non-Unanimous Settlement.

Respectfully submitted,

/s/ Sharon E. Webb

Sharon E. Webb
Assistant Small Business Advocate
Attorney ID No. 73995

For:

John R. Evans
Small Business Advocate

Office of Small Business Advocate
555 Walnut Street, 1st Floor
Harrisburg, PA 17101

Dated: April 20, 2021

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PENNSYLVANIA PUBLIC UTILITY
COMMISSION** :

v. :

Docket No. R-2020-3022135

**PIKE COUNTY LIGHT AND
POWER COMPANY (ELECTRIC)** :

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served via email (*unless otherwise noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Thomas J. Sniscak, Esq.
Whitney E. Snyder, Esq.
Bryce R. Beard, Esq.
Hawke, McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
tjsniscak@hmslegal.com
[wesnyder@hmslegal.com](mailto:wesnnyder@hmslegal.com)
brbeard@hmslegal.com

Santo G Spataro Attorney
Aron J Beatty Attorney
Office Of Consumer Advocate
555 Walnut Street
5th Floor Forum Place
Harrisburg Pa 17101
sspataro@paoca.org
abeatty@paoca.org

Dante Mugrace
PCMG & Associates
90 Moonlight Court
Toms River, NJ 08753
ocapike2020@paoca.org

DATE: April 20, 2021

Carrie B. Wright, Esquire
Erika McLain, Esquire
Bureau of Investigation & Enforcement
400 North Street
Commonwealth Keystone Building
Harrisburg, PA 17120
carwright@pa.gov
ermclain@pa.gov
(Counsel for BIE)

The Honorable Mary D. Long
Pennsylvania Public Utility Commission
Piatt Place
301 5th Avenue, Suite 2020
Harrisburg, PA 17120
malong@pa.gov
mhoffer@pa.gov
maboyle@pa.gov
ivanorder@pa.gov

/s/ Sharon E. Webb

Sharon E. Webb
Assistant Small Business Advocate
Attorney ID No. 73995